

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 14

FRONT ROW PRODUCE, LLC

Employer

and

Case 14-RC-089354

LOCAL 688, INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS AFFILIATED WITH INTERNATIONAL  
BROTHERHOOD OF TEAMSTERS  
Petitioner

**REGIONAL DIRECTOR'S REPORT ON CHALLENGES AND OBJECTIONS,  
AND ORDER APPROVING WITHDRAWAL OF OBJECTIONS  
AND RECOMMENDATIONS**

This report contains the Regional Director's recommendations regarding the challenge and objections filed by the Petitioner. The investigation of the challenged ballot established that the Employer lawfully terminated employee Henry Winter and that he was therefore not eligible to vote in the election. The challenged ballot should therefore be sustained. Since the Petitioner has withdrawn its objections to the conduct of the election, a Certification of Results of Election should issue.

**Procedural History**

Pursuant to a petition filed on September 17, 2012,<sup>[1]</sup> and a Stipulated Election Agreement approved by the Regional Director on September 25, an election was conducted on October 24, among employees of the Employer in the following-described appropriate collective-bargaining unit:

All full-time and regular part-time drivers employed by the Employer at its St. Louis, Missouri facility, EXCLUDING temporary, seasonal, maintenance, warehouse, office clerical and professional employees, guards and supervisors as defined in the Act.

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<sup>[1]</sup> All dates are in the year 2012 unless otherwise specified.

The results of the election were as follows:

Approximate number of eligible voters.....	5
Void ballots.....	0
Votes cast for Petitioner.....	2
Votes cast against participating labor organization.....	2
Valid votes counted.....	4
Challenged ballots.....	1
Valid votes counted plus challenged ballots.....	5

Challenges were sufficient in number to affect the results of the election.

Timely objections to conduct affecting the results of the election were filed by the Petitioner on October 30.<sup>[2]</sup>

On November 7, the Petitioner submitted a written request to withdraw its objections.<sup>[3]</sup>

Having carefully considered the matter and having concluded that withdrawal of the objections is not inconsistent with the purposes and policies of the Act,

IT IS HEREBY ORDERED that the Petitioner's request to withdraw its objections is approved.

Pursuant to Section 102.69 of the Board's Rules and Regulations, Series 8, as amended, I have caused an investigation to be made of the challenged ballot. I have carefully considered all evidence adduced during the investigation, and I report and recommend as follows:

#### **Background**

The Employer, with a facility located at 2437 North 9<sup>th</sup> Street in St. Louis, Missouri, is engaged in the non-retail sale of fruits and vegetables.

#### **Challenged Ballot**

The ballot of Henry Winter was challenged by the Employer on the ground that Winter was terminated prior to the election and was therefore ineligible to vote. It was the Petitioner's

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<sup>[2]</sup> A copy of the Petitioner's objections is attached as Exhibit 1.

<sup>[3]</sup> A copy of the withdrawal request is attached as Exhibit 2.

position that Winter was terminated in violation of Section 8(a)(3) of the Act, and that Winter was eligible to vote.

On October 4, the Petitioner filed charges in Case 14-CA-90738, alleging that Winter was discharged in violation of Section 8(a)(3) of the Act. On November 8, the Petitioner withdrew Case 14-CA-90738.

In the absence of a meritorious unfair labor practice charge, Winter's termination is presumed to be lawful. *McLean Roofing Co.*, 276 NLRB 830, 830 fn. 1 (1985), *Texas Meat Packers, Inc.*, 130 NLRB 279, 280 (1961).

It is well settled that in order to be eligible to vote in a Board-conducted election an employee must be employed and working on the eligibility date and the date of the election, unless absent for a reason specified in the direction of election. *Amoco Oil Corp.*, 289 NLRB 280 (1988); *Roy N. Lotspeich Publishing Co.*, 204 NLRB 5127 (1973). Because Winter was lawfully terminated and no longer employed by the Employer in the appropriate collective-bargaining unit on the date of the election, he was ineligible to vote in the election.


Accordingly, the undersigned recommends that the challenge to the ballot of Henry Winter be sustained.

#### **CONCLUSION AND RECOMMENDATIONS**

Having approved the Petitioner's request to withdraw objections, and having recommended that the challenge to Henry Winter's ballot be sustained, the results of the election are rendered conclusive. Inasmuch as the tally of ballots discloses that a majority of

the valid votes were not cast in favor of representation by the Petitioner, it is further recommended that a Certification of Results of Election should issue.<sup>[4]</sup>

November 14, 2012



Daniel L. Hubbel, Acting Regional Director  
National Labor Relations Board, Region 14  
1222 Spruce Street, Room 8.302  
St. Louis, MO 63103-2829

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<sup>[4]</sup> Under the provision of Section 102.69 of the Board's Rules and Regulations, exceptions to this Report may be filed with the Board in Washington, DC. Exceptions must be received by the Board in Washington by November 28, 2012.

Under the provisions of Section 102.69(g) of the Board's Rules, documentary evidence, including affidavits, which a party has timely submitted to the Regional Director in support of its objections and which are not included in the Report, are not part of the record before the Board unless appended to the exceptions or opposition thereto which the party filed with the Board. Failure to append to the submission copies of evidence timely submitted to the Regional Director and not included in the Report shall preclude a party from relying upon that evidence in any subsequent related unfair labor practice proceeding.

October 30, 2012

National Labor Relations Board  
1222 Spruce Street, Room 8.302  
St. Louis, MO 63102

Steven Johnson  
Organizer, Teamster Local Union No. 688  
4349 Woodson Road, Suite 200  
St. Louis, MO 53134

Dear Regional Director Hubbel:

The Union, Teamsters Local Union No. 688, pursuant to Section 102.69 of the Rules and Regulations of the National Labor Relations Board, files objections to conduct affecting the results of the representations election conducted on October 24, 2012. As grounds for the objections, the Union states the following:

1. The Employer terminated the employment of Henry Winter, a known Union supporter, in retaliation for his support of the Union, thereby interfering with, restraining and coercing voting unit employees.
2. The Employer interrogated employee Henry Winter about his support for the Union prior to the date that the representation petition was filed, thereby interfering with, restraining and coercing voting unit employees.
3. The Employer reduced the working hours of Clay Hodge during the critical period before the election, interfering with, restraining and coercing voting unit employees.
4. By these acts and conduct, the Employer has interfered with, restrained and coerced bargaining unit employees in the exercise of their rights guaranteed in Section 7 of the Act and has thereby engaged in objectionable conduct affecting the results of the election.

The Union requests that the election results be invalidated and that a rerun election be conducted.

Respectfully submitted,



Steven Johnson  
Organizer, Teamsters Local Union No. 688



**Young, Harold L.**

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**From:** Steve Johnson [sjohnson@688online.org]  
**Sent:** Wednesday, November 07, 2012 5:26 PM  
**To:** Fink, Bradley A.  
**Subject:** 14-RC-089354

Teamsters Local Union No. 688 would like to withdraw the objections in case 14-RC-089354 that were filed on October 30.

Sent from my iPhone

